IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CIVIL APPLICATION NO.383 OF 2006
IN
COMPANY PETITION NO.273 OF 1998

DSJ Communication Ltd. Applicant
versus
Official Liquidator Respondent

Shri A.s.Khandeparkar with Shri Santosh D. Raje for applicant.

Ms.K.V.Gautam, Act.O.L. present.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd August 2006

PC :

1. Heard Shri Khandeparkar appearing for the applicant and Acting Official Liquidator.

2. By this company application the applicant prays that the Official Liquidator be directed to remove the seal of Cabin No.105, First Floor, Shreyas Building, Andheri (W), Mumbai 400 053 and to remove or shift the books of accounts of the company in liquidation to some other place.

3. Shri Khandeparkar appearing for the applicant

submits that prior to the incorporation of the company in liquidation i.e. prior to 15th May 1990, by an agreement which was arrived at between the vendors and predecessor in title of the applicant the suit premises have been acquired. The agreement is of 1989. It is prior to the incorporation of the company in liquidation. It is after all payment being made and documents issued, that the applicant company was put in possession of these premises. He submits that the company in liquidation was just given some facility to store the records and at no stage the company in liquidation had any right, title or interest in the subject premises. He submits that reliance placed by the Official Liquidator on the fact that the Directors of the company in liquidation and the applicant being common, so also the company shifting its registered office from the subject premises to a premises at Mira Road by itself is not determinative of the fact that the company had any right in the subject premises. That does not prove that the applicant and the company in liquidation are common and the premises are shown to be belonging to the applicant for the sake of convenience. If that be the case, then there was no occasion to contend that the applicant had

acquired the premises much prior to the company in liquidation being incorporated. Shri Khandeparkar invited my attention to the documents annexed to the affidavit in rejoinder so also a compilation tendered across the bar.

4. The Official Liquidator has relied upon her affidavit and has contended that the application is not bona fide but is an attempt to siphon off the assets of the company in liquidation. She has also relied upon the report of the auditors appointed by the Official Liquidator to investigate into the affairs of the company in liquidation. She submits that monies have been invested in subsidiaries/companies under the same management and/or given as loans and no amount was recovered from the company under the same management or subsidiaries. She submits that in all probability the applicant has used all the funds of the company in liquidation for purchasing assets.

5. After perusing the application, affidavit in support, in reply and rejoinder so also the compilation, I am of the view that the law laid down by the Hon’ble Supreme Court in the case of Smt.P.Grover Vs. State of Haryana and another

reported in AIR-1983-SC-1061 would apply to the facts and circumstances of present case. It has not been shown that the company in liquidation had any right, title or interest in the premises. On the other hand, it has been demonstrated by producing documents that the applicant company has prior to the incorporation of the company in liquidation, acquired the subject premises. In such circumstances, it would not be proper to uphold the pleas of Official Liquidator. More so, when they are not substantiated by producing relevant materials and documents.

6. Additionally, Shri Khandeparkar after taking instructions from Shri Nitin Sawant, an Executive of the applicant who is present in the Court, states that at the costs of the applicant they would arrange for shifting of the records and documents as also relevant papers pertaining to the company in liquidation to its premises at Mira Road which are in possession of the Official Liquidator. That the company in liquidation has premises belonging to it at Mira Road and that they are in possession of the Official Liquidator, is a fact which is not disputed by the Official Liquidator. Therefore, it would be appropriate to direct that after taking inventory

of the records, documents and related papers so also all articles belonging to the company in liquidation, the Official Liquidator is permitted to shift the same at the cost of the applicant and in that behalf applicant shall render all assistance including providing vehicle for transporting the same from the subject premises to Mira Road.

7. Company Application is made absolute in terms of prayer clause (a) subject to the above direction.

8. Official Liquidator is directed to surrender possession after making inventory as directed above within a period of ten days from today. All concerned to act on an ordinary copy of this order duly authenticated by the registry of this Court.

(S.C.DHARMADHIKARI, J.)